

118 FERC ¶61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System
Operator Corporation

Docket No. ER01-313-008

Pacific Gas and Electric Company

Docket No. ER01-424-008

ORDER REJECTING REQUEST FOR REHEARING

(Issued January 29, 2007)

1. In this order, we reject the request of the Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC, collectively CAC/EPUC) for rehearing (second rehearing request) of Opinion No. 463-C issued in this proceeding on September 7, 2006.¹ Opinion No. 463-C denied rehearing of Opinion No. 463-B.

Background

2. Opinion No. 463-B dealt, in its relevant part,² with the allocation of the California Independent System Operator Corporation's (CAISO or ISO) control

¹ See *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,224 (2006) (Opinion No. 463-C). Opinion No. 463-C denied rehearing of *California Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,135 (2005) (Opinion No. 463-B).

² Pacific Gas and Electric Company submitted to the Commission its proposed Pass Through Tariff, which was consolidated with the GMC proceeding. Issues dealing with that tariff were discussed in both Opinion No. 463-B and Opinion No. 463-C. However those matters have no bearing on CAC/EPUC's second rehearing request and will not be mentioned here. For a full summary of the development of this proceeding prior to Opinion No. 463-C, see Opinion No. 463-C, 116 FERC ¶ 61,224 at P 2-8.

area services (CAS) component of its grid management charge (GMC) for the period from January 1, 2001 through December 31, 2003 (locked in period) to behind-the-meter generation. In it the Commission found that: (1) the ISO, using models provided by the Participating Transmission Owners (PTOs), conducted studies concerning transmission planning and operation during the locked-in period; (2) the generating units included in these studies were modeled by the ISO during the locked-in period, and thus the ISO incurred costs recovered by the ISO's CAS charge; (3) there is record evidence that unmodeled behind-the-meter generation did not impose CAS costs because it was not taken into account by the ISO's transmission planning and operations; and (4) Exh. ISO-55 does not provide a sufficiently accurate basis for determining which generators were modeled, and accordingly a compliance filing to address any deficiencies was ordered.³

3. In Opinion No. 463-C, the Commission denied numerous requests for rehearing of its findings in Opinion No. 463-B, including a request by CAC/EPUC. Many of the findings in Opinion No. 463-C do not pertain to CAC/EPUC's rehearing request, and we therefore mention only the following.

4. In Opinion No. 463-C, the Commission reaffirmed its basic view that generators that will not cause the ISO to incur expenses should have their load exempted from CAS charges. The Commission explained that the evolution of the mechanics of that exemption in this proceeding represents a refinement of its initial position as additional information became known. The Commission rejected the contention that the exemption provided in Opinion No. 463-B was overly narrow and resulted in inconsistency between the exemption and the findings in Opinion No. 463 and Opinion No. 463-A. The Commission stated that it did not begin with a pre-conceived idea concerning the exemption, and for this reason it rejected any contention that the exemption ultimately adopted is inconsistent with its original intentions.⁴

5. Finally, the Commission again noted that the ISO incurs administrative costs in conducting such activities as transmission planning studies and transmission operation studies and that the PTOs historically have been the source of the transmission and generation data required to conduct such studies and analyses. The Commission stated that to the extent that generators are included in PTO studies and/or models and the ISO subsequently receives that information, the ISO will decide whether the information is relevant and useful in conducting its various studies and in modeling the transmission system. If the ISO decides

³ Opinion No. 463-B, 113 FERC ¶ 61,135 at P 61.

⁴ Opinion No. 463-C, 116 FERC ¶ 61,224 at P 25.

that the information regarding behind-the-meter generators is relevant to its studies and system modeling, then those generators are ineligible for the exemption because they are significant for study and modeling purposes and thus ultimately relate to administrative costs incurred by the ISO.⁵

6. CAC/EPUC filed a second rehearing request seeking rehearing of Opinion No. 463-C.

Discussion

7. We reject the CAC/EPUC's second rehearing request. The Commission does not allow rehearing of an order denying rehearing.⁶ Any other result would lead to never-ending litigation, as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing unless presumably that response were word-for-word identical to what the Commission earlier said.⁷ Litigation before the Commission cannot be allowed to drag on indefinitely. At some point it must end, and therefore the Commission does not allow parties to seek rehearing of an order denying rehearing. And, as the U.S. Court of Appeals for the District of Columbia Circuit has put it, even "an improved rationale" would not justify a further request for rehearing.⁸

8. Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a

⁵ *Id.* at P 28.

⁶ *See, e.g., KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *Southern Company Services, Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Company d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Southwestern Public Service Co.*, 65 FERC ¶ 61,088 at 61,533 (1993).

⁷ *Accord, e.g., Canadian Association of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").

⁸ *See Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (*Southern*) (citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

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wholly new objection.⁹ In fact, a second rehearing request is required in instances when the later order modifies the results of the earlier order in a significant way.¹⁰

9. Here, Opinion No. 463-C denied rehearing and affirmed the findings in Opinion No. 463-B. In these circumstances, the second rehearing request was neither required nor appropriate.

The Commission orders:

CAC/EPUC's request for rehearing of Opinion No. 463-C, which denied rehearing of Opinion No. 463-B, is hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See *Southern*, 273 F.3d at 424.

¹⁰ See *California Department of Water Resources v. FERC*, 306 F.3d 1121, 1125 (D.C. Cir. 2002); *Town of Norwood, Massachusetts v. FERC*, 906 F.2d 772, 775 (D.C. Cir. 1990).